

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

GRANT BIRCHMEIER, et al.,	}	Docket No. 12 C 4069
Plaintiffs,		
vs.		
CARIBBEAN CRUISE LINE, INC., et		
al.,		
Defendants.	}	Chicago, Illinois September 29, 2016 10:00 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS - MOTION
BEFORE THE HONORABLE MATTHEW F. KENNELLY

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1 (The following proceedings were had in open court:)

2 THE CLERK: Case No. 12 C 4069, Birchmeier v.
3 Caribbean Cruise Line.

4 THE COURT: Good morning.

5 MR. BALABANIAN: Good morning, your Honor.

6 MR. HUDSON: Good morning, your Honor. Tim Hudson on
7 behalf of defendant Caribbean Cruise Line and Vacation
8 Ownership Marketing Tours.

9 MR. O'MEARA: And good morning, your Honor. Brian
10 O'Meara on behalf of the defendant The Berkeley Group.

11 MR. BALABANIAN: Good morning, your Honor. Rafey
12 Balabanian on behalf of plaintiffs in the class.

13 MS. RAPP: Good morning, your Honor. Eve-Lynn Rapp
14 on behalf of plaintiffs in the class.

15 MR. RAUSCHER: Good morning, your Honor. Scott
16 Rauscher also on behalf of plaintiffs in the class.

17 THE COURT: Okay. So I have a bunch of questions.

18 MR. BALABANIAN: Yes, your Honor.

19 THE COURT: I want to try to organize this and do
20 them in a sequence that makes sense.

21 Okay. So it looks like it's going to take a total
22 of 24 months to fund the settlement, right?

23 MR. BALABANIAN: Yes, your Honor.

24 THE COURT: Okay. I need somebody to -- and I have
25 an assumption about what the reason is, but I need it to be

1 explained. And I don't know if that explanation should come
2 from the plaintiffs or from the defendants or both.

3 MR. BALABANIAN: I'm happy to take the lead, and I'm
4 sure -- perhaps the defendants will want to supplement.

5 The reason is the financial viability of the
6 defendants. We had to structure the settlement over time in
7 order for us to achieve the amount that we wanted to reach for
8 the settlement class.

9 THE COURT: In other words, if it had all been
10 payable up front, you either wouldn't have gotten the same
11 amount or it would not have been doable.

12 MR. BALABANIAN: Exactly right. Exactly right.

13 THE COURT: Is that correct on the defense side?

14 MR. O'MEARA: Yes. That is correct, your Honor.

15 THE COURT: Both defendants say yes -- groups of
16 defendants say yes. Okay.

17 MR. BALABANIAN: And I can -- I could in a sidebar
18 elaborate on --

19 THE COURT: No. I --

20 MR. BALABANIAN: -- how it's being --

21 THE COURT: Nothing is going to be done at a sidebar
22 here.

23 MR. BALABANIAN: Understood.

24 THE COURT: And the reasons for that are fairly
25 obvious. I mean, there could be objections and whatnot.

1 Everything is going to be completely a hundred percent on the
2 record.

3 MR. BALABANIAN: It was a stupid suggestion. Excuse
4 me.

5 THE COURT: Yeah.

6 MR. BALABANIAN: If the Court wants detail, I can
7 just confer with defense counsel.

8 THE COURT: Go ahead.

9 (Brief pause.)

10 MR. BALABANIAN: I would just say that with respect
11 to the defendants' funding obligations, they -- obviously, the
12 financial viability of them has been a very real issue in this
13 case from the start. They had to be creative in how they were
14 going to fund the settlement, and they have gone to great
15 lengths to secure that funding, I will say. So we're
16 confident --

17 THE COURT: Can I get you to confirm that on the
18 defense side?

19 MR. O'MEARA: I can confirm that, your Honor.

20 THE COURT: Okay. And you represent which folks
21 again?

22 MR. O'MEARA: The Berkeley Group.

23 THE COURT: The Berkeley Group.

24 MR. O'MEARA: Yes.

25 THE COURT: Okay. My second question is whether -- I

1 have to say, I was a bit thrown. I couldn't figure out which
2 notice was going where and when. I mean, there's long forms,
3 there's short forms, there's postcards, there's this, there's
4 that. At some point, I am going to need you to walk me
5 through what's what.

6 MR. BALABANIAN: Yes, your Honor.

7 THE COURT: But do the notices explain this sort of
8 two-stage payment thing? Because it sounds like there's going
9 to be a two-stage payment, right?

10 MR. BALABANIAN: That's right.

11 THE COURT: You are going to get paid, and then the
12 second part is going to get paid, and it's dependent upon
13 whether the settlement ends up being the bigger amount or the
14 smaller amount, and it's also dependent upon the final deposit
15 being made by the defendants, whether it's bigger or smaller.

16 Do I have that basically right?

17 MR. BALABANIAN: You do.

18 THE COURT: Okay. So is that explained in the
19 notice?

20 MR. BALABANIAN: Yes and no. It's explained in the
21 long form notice. It's not explained in the individual
22 notices that will go to the class members because --

23 THE COURT: The long form notice -- and,
24 unfortunately, I -- if I had been advising you on how to do
25 this, I would have said mark each notice as an exhibit.

1 So you have Exhibit 1 is like 800 pages of notice. I
2 am exaggerating somewhat.

3 MR. BALABANIAN: Yes, your Honor.

4 THE COURT: So it's Exhibit what?

5 MR. BALABANIAN: It is Exhibit D to the settlement
6 agreement, your Honor.

7 THE COURT: Exhibit D to the settlement agreement is
8 the long form notice. Okay. So let me just get that one in
9 front of me.

10 All right. So just zero me in on where it talks
11 about the two-stage thing.

12 MR. BALABANIAN: The paragraph with respect to --

13 THE COURT: When will I get my payment?

14 MR. BALABANIAN: Right.

15 THE COURT: Hang on a second. Now I'm seeing that.
16 It's paragraph 9.

17 MR. BALABANIAN: And, your Honor --

18 THE COURT: Got it. First payment will be made
19 within seven months after entry of the order finally approving
20 its settlement. The second payment will be made up to 25
21 months later.

22 So who is going to get the long form notice,
23 everybody?

24 MR. BALABANIAN: The long form notice is posted on
25 the settlement website. Everyone will get notice of that

1 settlement website through the individual notices.

2 THE COURT: Something will say to go there. Then the
3 notice that the people that you end up having an address on
4 and so you are going to send it to an address, is that
5 Exhibit C?

6 MR. BALABANIAN: B and C. We are sending both
7 postcards and --

8 THE COURT: So the postcards -- okay. So let me tell
9 you what I think my concern is. And part of it I am just kind
10 of reacting here, so I may not get this exactly right.

11 It's likely, I would think, that you're going to get
12 some number of people who will see the postcard and/or the
13 other short form notice that they get and don't ever go on to
14 the website and read the whole eight or nine pages; or if they
15 go on the website, they will get bored after the second
16 page -- "bored" is a word I am using to cover all sorts of
17 things, bored, fed up, whatever -- and won't get to the part
18 where it says "two stages."

19 And one of the concerns I have is somebody thinks,
20 I'm going to get \$300 and they end up getting 150, and they
21 say, where is my other 150? Now, if they had read the whole
22 long form notice, they would get it, but they haven't read the
23 whole long form notice. And then what starts happening is I
24 start getting letters and you start getting letters and people
25 start filing claims and Wayne Andersen ends up having to deal

1 with stuff, you know, in his capacity as settlement master or
2 whatever you're calling him here. And I think we need to try
3 to find a way to avoid that. I mean, I think we need to try
4 to find a way to put -- maybe not necessarily in the postcard,
5 because the postcard is already quite crowded and quite small
6 type, but in the short form notice -- Exhibit C, in other
7 words -- something about this two-stage thing.

8 MR. BALABANIAN: We can certainly do it in the email.
9 That's not an issue sizewise. The postcard is a little tough.

10 THE COURT: No, I say skip the postcard.

11 MR. BALABANIAN: Very well.

12 THE COURT: Because you said everybody is going to --
13 people you have addresses are going to get both the postcard
14 and Exhibit C.

15 MR. BALABANIAN: If we can find an email for them.

16 THE COURT: Oh, so Exhibit C is an email notice?

17 MR. BALABANIAN: Correct. Correct.

18 THE COURT: So you are going to get the postcard by
19 mail -- okay, I see what you're saying.

20 MR. BALABANIAN: Look, the reality is, Judge, we can
21 try to be creative. We have included everything in the
22 postcard that we are required to under Rule 23, and it's --

23 THE COURT: Yeah, you can't get the font much smaller
24 than that.

25 MR. BALABANIAN: It's pretty small. But that was

1 something the Court had brought up at the sort of preliminary
2 preliminary hearing we had a couple weeks ago, so I understand
3 that that's something on your radar.

4 THE COURT: Maybe there is another way to do this.
5 So when the first payment is sent out, would there be a way to
6 put in with the first payment something that says, here is
7 your first payment. The second one is going to come no later
8 than X?

9 MR. BALABANIAN: Conceivably --

10 THE COURT: I mean, I know that increases the cost.
11 I know that.

12 MR. BALABANIAN: Well, conceivably, you could do that
13 on the check itself. But the question is whether that second
14 payment is going to come.

15 THE COURT: Yeah.

16 MR. BALABANIAN: You know. The difficulty is locking
17 people into an idea one way or another that you kind of --
18 that it's a fine line you have to take --

19 THE COURT: So the second payment is not a certainty,
20 and so the concern would be if you tell people there is a
21 second payment, then they are going to say, where is my second
22 payment?

23 MR. BALABANIAN: Right. We could post it on the
24 website. And, you know, with our experience in the Walgreens
25 case, we have supplemented that website throughout that

1 process.

2 THE COURT: I mean, is there a way -- I guess my
3 question would be if there is a way to do this in a more
4 prominent way than paragraph 9 of a -- or point 9 of a pretty
5 gosh darn long thing here. I mean, it's on page 5 out of 8.

6 MR. BALABANIAN: Agreed. Here's actually what I
7 would suggest is that the website is going to be mocked up.
8 We can put it on the landing page of the website. Everybody
9 is going to go to the website to file a claim. Well, I
10 shouldn't say everybody, but people will go to the website.
11 And, you know --

12 THE COURT: Is that your experience on these things,
13 that people actually do go on the website?

14 MR. BALABANIAN: Absolutely. Absolutely, yes. And
15 so we don't have to hide it or we don't have to even have a
16 link to it. We can just have it posted prominently on the
17 landing page.

18 THE COURT: Let me go back to something you said.
19 When you say there is a question about whether there is going
20 to be a second payment, and maybe I'm missing something, is
21 that if the defendants go belly up?

22 MR. BALABANIAN: It depends on the number of claims
23 and -- what the total amount of filed and approved claims. So
24 there is a floor and a ceiling. And whether or not the floor
25 is --

1 THE COURT: That's not what paragraph 9 tells them.
2 Paragraph 9 says, If the Court approves the settlement,
3 eligible class members whose claims were approved by the
4 settlement administrator will receive their per-call payment
5 in two roughly equal installments. The first payment will be
6 made within seven months after entry of an order finally
7 approving the settlement, and the second payment will be made
8 up to 25 months later. Should the defendant go out of
9 business, your second payment may be reduced in whole or in
10 part.

11 It says, you are going to get two installments. They
12 are going to be roughly equal. It doesn't say there's any
13 uncertainty other than the risk of the defendants going out of
14 business.

15 MR. BALABANIAN: I misspoke. I did. And I -- excuse
16 me, Judge. There will be a second payment regardless.

17 THE COURT: There is a second payment.

18 MR. BALABANIAN: Yes.

19 THE COURT: So we don't have to be concerned about
20 creating a false hope because there isn't a false hope.

21 MR. BALABANIAN: Well, just --

22 THE COURT: The whole reason that you've structured
23 the settlement -- I mean, I know there are no guarantees in
24 life, but the reason the payment is structured the way it is
25 is to avoid the defendants going out of business.

1 MR. BALABANIAN: Right. Exactly. And we think that
2 there's --

3 THE COURT: Well, we need to do something about this.
4 You have an idea of what the issue and the problem is.

5 MR. BALABANIAN: Yes. And I think that it would
6 probably be taken care of through the website idea, but I
7 would want to present that to the Court to make sure that the
8 Court's comfortable with it. We haven't mocked up the website
9 as of yet --

10 THE COURT: Okay.

11 MR. BALABANIAN: -- but it's not something that's
12 difficult to present to the Court as a supplement.

13 THE COURT: Okay. I think I'd like to see that.

14 MR. BALABANIAN: Of course.

15 THE COURT: In terms of -- the attorneys' fee payment
16 is going to be made, and it said in the long form notice in
17 the same way. So how exactly does that get broken down? Is
18 it half and half, or is it something other than half and half?
19 Because the percentages aren't exactly half and half in terms
20 of the -- when the money is going into the fund, right?

21 MR. BALABANIAN: No, it's not exactly half and half
22 when the money is going into the fund, but, basically --

23 THE COURT: What are you going to propose to me, I
24 guess, is probably the better question of when and how the
25 attorneys' fees get paid?

1 MR. BALABANIAN: On the exact same schedule that the
2 class would be paid.

3 THE COURT: But the question is the breakdown --

4 MR. BALABANIAN: The breakdown would essentially be
5 half and half.

6 THE COURT: Half and half. Okay. All right.

7 MR. BALABANIAN: And if -- excuse me.

8 THE COURT: Go ahead. That's fine.

9 MR. BALABANIAN: On the fee issue, just to be clear,
10 the fee is a maximum amount that we have stated.

11 THE COURT: I understand.

12 MR. BALABANIAN: We don't know if we will be seeking
13 that.

14 THE COURT: I understand. I get that.

15 MR. BALABANIAN: Yeah.

16 THE COURT: As you point out in here, this is a way
17 bigger settlement than overwhelming -- I mean, even on a
18 per-person basis than the overwhelming majority. Maybe all --

19 MR. BALABANIAN: Every settlement.

20 THE COURT: -- of TCPA cases. I know that we had
21 some discussions at some point in time about what you think
22 the claims rate is going to be. Do people have a guess on
23 that?

24 MR. BALABANIAN: Yeah, sure.

25 THE COURT: What?

1 MR. BALABANIAN: In TCPA cases, typically, it's
2 between 2 and 5 percent.

3 THE COURT: It's going to be way higher than that on
4 this.

5 MR. BALABANIAN: It's going to be higher than that on
6 this case. We think it's going to approach 10 percent. We
7 think the people will get probably about 3 to \$500 per call at
8 the end of the day, and we do believe that the fund will be
9 exhausted.

10 THE COURT: Yeah. I'd be willing to bet there is a
11 chance it's going to be significantly in excess of 10 percent.
12 I mean, if I -- I get these things like other people do.
13 Okay? When I see something that says I am going to get \$2.48,
14 why bother? It's the cost of a stamp or whatever. If I got
15 something that says I am going to get as much as a couple or
16 three hundred bucks, I am putting that claim in.

17 MR. BALABANIAN: Yes.

18 THE COURT: And there's going to be some number of
19 people that won't even read this stuff. I mean, you will have
20 sort of the initial drop-off of the people who don't open it,
21 the people who don't bother reading it, the people who read it
22 and decide, I don't want to have anything to do with this,
23 it's lawyers and lawsuits, I hate that stuff.

24 So my question is so what's -- let's say you end up
25 with 30 percent, okay, which would be a wildly high number for

1 class action settlements, but this is bigger than most. What
2 does the per-person amount end up going down to?

3 MR. BALABANIAN: Well, I can't do the math as I sit
4 here because I am just not that good at it.

5 THE COURT: You are not a math person. Yeah.

6 If it's 10 percent, what does it end up being,
7 ballpark?

8 MR. BALABANIAN: If it's 10 percent, that's a
9 \$90 million payout, basically. So it would fall in between
10 the 3 and \$500 per-call range, which dwarfs every other
11 settlement. And I am happy to add color to the claims rate
12 and how I got there, Judge. I'm not terribly proud to say,
13 but as the Court knows, you know, I do this kind of work a
14 lot, and so I do have my predictions. I have had other
15 settlements, one in particular where it was a per-call amount,
16 and people recovered substantial amounts. One of my class
17 members recovered to the tune of \$13,000.

18 THE COURT: And it still ended up being --

19 MR. BALABANIAN: It was still the same rate. It was
20 about 4 percent in that case.

21 I do think it will be higher in this case, based on
22 our analysis. I think, realistically, it will approach the 10
23 percent range. And so --

24 THE COURT: It will be interesting to see.

25 MR. BALABANIAN: And, of course, the Court is going

1 to know all of that.

2 THE COURT: Right.

3 In all of these notices, there's something that
4 says -- hang on a second.

5 Yeah. So one thing that I thought was potentially
6 confusing --

7 MR. BALABANIAN: Yes, your Honor.

8 THE COURT: -- for your average layperson who is
9 going to get one of these things is this whole idea that you
10 might have to provide some sort of documentation. So I tried
11 to read this as a non-lawyer, which is not easy to do. But on
12 the postcard --

13 MR. BALABANIAN: Yes.

14 THE COURT: -- the claim form says, just send this
15 thing back, give us all this information, name, address, phone
16 number, including the phone number where the calls were
17 received, and your email address. It says, you may, if
18 necessary, be required to provide documents. They don't have
19 to do it with this, though, right? They are just sending back
20 the --

21 MR. BALABANIAN: For people who are not on the list?

22 THE COURT: I'm talking about anybody who gets the
23 postcard.

24 MR. BALABANIAN: Excuse me. Right.

25 THE COURT: They don't have to send back anything.

1 MR. BALABANIAN: Correct.

2 THE COURT: Okay. So when -- there's some of these
3 other notices that say -- where the person signs it, it says,
4 I have included the required proof, or something like that.

5 MR. BALABANIAN: That's for people not on the list.

6 THE COURT: When you say "the list," again, since
7 somebody is going to be reading this someday, what do you mean
8 by "the list"?

9 MR. BALABANIAN: The class list that we have. So we
10 have the class definition broken up in two ways per the
11 Court's --

12 THE COURT: So I am looking at, for example,
13 Exhibit A. Exhibit A is the one that goes out to which
14 people? Those are the people that are not on the list, I take
15 it?

16 MR. O'MEARA: That's correct.

17 THE COURT: Okay.

18 MR. BALABANIAN: So you would obtain that from the
19 website, your Honor, to the extent you --

20 THE COURT: So this is somebody who finds out about
21 it, they are not on the list, they find out about it, they go
22 on the website, they see this on the website. Okay.

23 MR. BALABANIAN: We have publication notice as well.

24 THE COURT: Got it.

25 I would -- this is a really tiny thing, but anytime

1 you've got one of these forms that has -- that says something
2 that says, I've included the required proof that I received
3 these calls, put that in bold print, please.

4 MR. BALABANIAN: Yes, your Honor.

5 THE COURT: And it's not just on the one form. It's
6 on several forms. I just think that it needs to be flagged.

7 MR. BALABANIAN: Yes, your Honor.

8 THE COURT: I say this as somebody who imposes a
9 requirement on lawyers to do certain things before initial
10 status hearings. It's on a website, tells them what to do, 30
11 percent non-compliance. And that's lawyers. Okay? And I
12 assume there's going to be 30 percent non-compliance.

13 MR. BALABANIAN: That's depressing.

14 THE COURT: So if I could screen the whole thing on
15 the website, I would do it. So just put that one thing in
16 bold print.

17 MR. BALABANIAN: Yes, your Honor. In everything, we
18 will.

19 THE COURT: Let's see. On the -- there's not going
20 to be anything going out in an envelope, right? It's just a
21 postcard?

22 MR. BALABANIAN: Correct.

23 THE COURT: Okay. So that question I was going to
24 ask is moot.

25 Oh, the -- I take it that the fees come out of the

1 overall amount?

2 MR. BALABANIAN: Correct.

3 THE COURT: And so that reduces it. These notices
4 don't really seem to say that. So you need to include
5 something about that.

6 MR. BALABANIAN: Okay. We can --

7 THE COURT: In other words, something that says that
8 the fees come out of the overall amount.

9 MR. BALABANIAN: We can do that.

10 THE COURT: Okay. What happens if you have so few
11 claimants that whatever the number is times \$500 comes out to
12 less than 56 million?

13 MR. BALABANIAN: It goes up. So their --

14 THE COURT: They'll get more than \$500.

15 MR. BALABANIAN: They will get up to \$1500 per call.

16 THE COURT: Fine. That answers that question.

17 Okay. Then the last thing.

18 MR. BALABANIAN: Yes, your Honor.

19 THE COURT: Page 5, footnote 3 of the motion. This
20 is the thing that talks about -- well, it's actually in the
21 text of the motion. So this thing about dispute -- a
22 challenge over whether somebody is actually a member of the
23 class or not, and the proposal is to have -- I am going to
24 call him Mr. Andersen since he is not a judge anymore; I mean,
25 he is, but he isn't -- is to have former Judge Andersen decide

1 this, and I am not sure that I am comfortable with that. And
2 I appreciate it if what -- I guess what I'm -- let me amend
3 what I am saying. I am not sure that I am comfortable with
4 him being the final arbiter of that. I appreciate it if what
5 people were thinking is, well, we don't want to bother Judge
6 Kennelly with this. That's my job is to be bothered with
7 stuff in lawsuits. And I guess my concern would be that
8 somebody doesn't think they have their day in court on an
9 issue like that.

10 MR. BALABANIAN: Yes.

11 THE COURT: And I don't know how significant having
12 him being the final arbiter is or was in terms of the overall
13 settlement, but I guess I am just -- as I sit here and I have
14 thought about it some more after I read it initially, I am not
15 entirely comfortable with it. I mean, I would be more
16 comfortable with it if there was something that made it clear
17 to people that they can appeal to me, or that you can appeal
18 to me, I mean, one way or another. I don't want to
19 necessarily increase the cost, but we are talking about a lot
20 of money here, so if I increase the cost a little bit, it's no
21 big deal.

22 MR. BALABANIAN: This Court is the final arbiter of
23 all matters related to the settlement.

24 THE COURT: Well, it sounds like, though, that you've
25 got that as being kind of he is the final decisionmaker. Did

1 I read it wrong?

2 MR. BALABANIAN: No. As between the parties, that's
3 true. But the Court's review doesn't end there, and someone
4 could come in on an objection, conceivably, and say, I don't
5 want Judge Andersen to decide my issue.

6 Now --

7 THE COURT: Yeah, but I don't want to leave it to
8 somebody to have to object on that. That's what I am telling
9 you. I want this settlement -- I am not comfortable with
10 that, and I want it to include something that says that -- I
11 mean, maybe it's like 95 percent of district court rulings,
12 people don't appeal, but I want to make sure that people know
13 that they have the right to appeal to me.

14 MR. BALABANIAN: Well, we can include that language.

15 THE COURT: Is that going to pose a problem on the
16 defense side in terms of the settlement?

17 MR. O'MEARA: I don't think so, your Honor. And just
18 to be clear, the challenge will likely be really just to the
19 number of calls rather than them being a class member.

20 THE COURT: Yeah, but "probably" is something less
21 than a hundred percent certain.

22 MR. O'MEARA: Yeah, I understand.

23 MR. BALABANIAN: And so the -- certainly, we would be
24 comfortable including language about how Judge -- or, excuse
25 me --

1 THE COURT: Former Judge Andersen.

2 MR. BALABANIAN: Mediator Andersen, former Judge
3 Andersen's determination is still subject to the Court's final
4 review and approval, because it is. I mean, that's just the
5 reality of Rule 23.

6 THE COURT: I didn't think that from looking at this.

7 MR. BALABANIAN: I understand.

8 THE COURT: I guess what I would say is I want you to
9 include something in here that says that whatever he
10 determines in his capacity as the settlement administrator --

11 MR. BALABANIAN: Special master, your Honor.

12 THE COURT: -- special master is, you know, subject
13 to my approval and that people would need to be -- that a
14 claimant whose claim gets turned down or cut in number or
15 whatever it is would need to be told at the time that Judge
16 Andersen decides it that they have X number of days to file
17 something with me to challenge it. Okay?

18 MR. BALABANIAN: Yes.

19 THE COURT: So do that.

20 MR. BALABANIAN: Yes.

21 THE COURT: And so I think I've covered all of the
22 points I wanted to make.

23 All right. Is there anything more you want to tell
24 me?

25 MR. BALABANIAN: Two things. A couple housekeeping

1 matters.

2 I am embarrassed to say that we gave the Court a
3 courtesy copy of a settlement agreement that wasn't fully
4 executed. I do have a fully executed copy now if you want it
5 for your file, and I think the publication notice was cut off,
6 so I just want to --

7 THE COURT: Yeah, okay.

8 MR. BALABANIAN: I can give the Court a complete copy
9 now.

10 THE COURT: Which one is the publication notice?
11 Exhibit what?

12 MR. BALABANIAN: I think it was F, your Honor.

13 THE COURT: It's in here. Oh, you think it was cut
14 off at the bottom? It looked like --

15 MR. BALABANIAN: No, it's cut off to the side. It's
16 weird -- you know, it's sort of the margin was to the left.
17 Maybe you got a corrected version.

18 THE COURT: I think -- it didn't look like there were
19 any words missing or letters or anything like that, so I think
20 it's okay.

21 MR. BALABANIAN: Just two other minor things. I have
22 to acknowledge Judge Andersen's contribution to this.

23 THE COURT: Oh, it's been enormous. Yeah.

24 MR. BALABANIAN: And he worked with the parties
25 nights and weekends, and it would not have gotten done.

1 And I have to thank the Court for the patience it's
2 displayed on this case. I don't think we were deserving of
3 it. I appreciate it, and we are glad we are here.

4 THE COURT: It's a big case.

5 All right. So with the one thing that I have asked
6 you to modify and the tweaks to the notice, I find that the
7 settlement is within the range of reasonableness. And so the
8 motion for preliminary approval is granted, subject to the
9 small changes that we talked about.

10 What I'd like you to try to do is get me something
11 by -- in terms of showing me what the website is going to look
12 like, tweaking the notices, and making this one modification
13 about, you know, adjudication issues, is two weeks a
14 reasonable amount of time? You probably need that long.

15 MR. BALABANIAN: Certainly. That's fine.

16 THE COURT: Okay. So I'm going to set you to come
17 back on the -- it's going to be a little more than that. I am
18 going to have you come back on the 20th of October. I am gone
19 for a bunch of days in the beginning of the month.

20 MR. BALABANIAN: That's fine, Judge.

21 THE COURT: All right. Thanks.

22 MR. BALABANIAN: Thank you for your time.

23 MR. O'MEARA: Judge, real quickly. I'm perhaps going
24 to ask the obvious here, but this is -- today is the granting
25 of the preliminary approval? Because our first payment is 21

1 days from today.

2 THE COURT: Yes. I have granted the motion for
3 preliminary approval.

4 MR. O'MEARA: Thank you very much, your Honor.

5 MR. BALABANIAN: Thank you, your Honor.

6 (Which were all the proceedings had in the above-entitled
7 cause on the day and date aforesaid.)

8 I certify that the foregoing is a correct transcript from
9 the record of proceedings in the above-entitled matter.

10 Carolyn R. Cox
11 Official Court Reporter
Northern District of Illinois

Date

12 /s/Carolyn R. Cox, CSR, RPR, CRR, FCRR